

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF TEXAS (SHERMAN DIVISION)

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 v.

6 GUSTAVO ANGARITA RIOS, JOSE
7 HOME ACOSTA, et al,

8 Defendants.

Case No. 4:14-cr-00073-SDJ-
KPJ-1 and 3Plano, Texas
December 1, 2016
11:04 a.m.9 TRANSCRIPT OF CHANGE OF PLEA HEARING
10 BEFORE THE HONORABLE KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE

11 APPEARANCES:

12 For the Plaintiff:

Ernest Gonzalez, Esquire
U.S. Attorney's Office
101 E. Park Boulevard
Suite 500
Plano, TX 75074

14 For the Defendants:

15 (Gustavo Angarita Rios
16 and Jose Home Acosta)Scott T. Kalisch, Esquire
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17 Court Recorder:

Toya McEwen

18 Interpreter:

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(518) 302-677224 Proceedings recorded by electronic sound recording;
25 transcript produced by transcription service.

1 (Call to order at 11:04 a.m.)

2 THE COURT: All right, the Court calls cases number
3 414CR73, United States v. Gustavo Angarita Rios and Jose Home
4 Acosta.

5 MR. GONZALEZ: Your Honor, Ernest Gonzalez for the
6 Government. The Government's ready to proceed.

7 MR. KALISCH: Your Honor, Scott Kalisch appearing on
8 behalf of both Defendants. They're present in Court. We're
9 ready to proceed. Thank you.

10 THE COURT: Good morning.

11 And Mr. Kalisch, you represent both Defendants,
12 correct?

13 MR. KALISCH: Correct, Your Honor. Yes, Your Honor.

14 THE COURT: Okay.

15 THE INTERPRETER: Thank you, Your Honor.

16 THE COURT: Uh-huh. Let the record reflect we have
17 Mr. Luis Garcia here to provide interpreting services for both
18 Mr. Rios and Mr. Acosta.

19 Mr. Rios and Mr. Acosta, because you are indicted in
20 the same case and represented by the same counsel and
21 essentially have the same plea agreements, I'm going to take
22 your pleas together.

23 However, I will need separate answers to each
24 question that I ask. So do we have an order? Is Mr.
25 Rios -- are you Mr. Rios?

1 MR. RIOS (through interpreter): Yes.

2 THE COURT: Yes.

3 Okay, and you are Mr. Acosta?

4 MR. ACOSTA (through interpreter): Yes, ma'am.

5 THE COURT: All right, when -- I'm going to speak to
6 you -- to both of you together, but then when I ask a question,
7 Mr. Rios, if you will answer first.

8 And then, Mr. Acosta, you second.

9 Every time I ask a question unless I specifically
10 direct a question to you, that will hurt -- help for
11 clarification of the record. Do you understand?

12 MR. RIOS: Yes.

13 MR. ACOSTA: Yes, ma'am.

14 THE COURT: Okay. All right, please raise your right
15 hand to be sworn.

16 (Defendants are sworn)

17 THE COURT: Please state your full name and age for
18 the record?

19 MR. RIOS: Gustavo Angarita Rios, 60 years old.

20 MR. ACOSTA: Jose Home Acosta, 53 years old.

21 THE COURT: And what is the last grade of school that
22 you completed?

23 MR. RIOS: I went to school one year only.

24 MR. ACOSTA: And I went to school three years.

25 THE COURT: Can you read and write?

1 MR. RIOS: A little, tiny bit.

2 MR. ACOSTA: Yes, I do, yes.

3 THE COURT: Have you ever been diagnosed with any
4 mental illness or problem?

5 MR. RIOS: No.

6 MR. ACOSTA: No.

7 THE COURT: Are you currently under the influence of
8 any drug or alcohol?

9 MR. RIOS: No.

10 MR. ACOSTA: No.

11 THE COURT: Counsel, do you believe that Mr. Rios and
12 Mr. Acosta are fully competent to proceed here today?

13 MR. KALISCH: Yes, I do, Your Honor.

14 THE COURT: All right, sirs, you have the right to
15 have your plea of guilty taken by the district judge assigned
16 to your case.

17 Or you can have the United States magistrate judge
18 take your plea and make a recommendation to the district judge.
19 Have you discussed this right with your counsel?

20 MR. RIOS: Yes.

21 MR. ACOSTA: Yes.

22 THE COURT: I am not sure whose is whose to hold up
23 for whom. Oh, okay. So Rios is 1? Okay, all right.

24 All right, Mr. Rios, I'm holding up a waiver and
25 consent form. Is that your signature on the bottom?

1 MR. RIOS: Yes.

2 THE COURT: And did you review this document with
3 your counsel before you signed it?

4 MR. RIOS: Yes.

5 THE COURT: And is it your desire to proceed with
6 your plea of guilty before a magistrate judge here today?

7 MR. RIOS: Yes, Your Honor.

8 THE COURT: All right, I find the waiver and
9 consent's been knowingly and voluntarily given and we'll
10 proceed with your plea today.

11 Mr. Acosta, I'm holding up a waiver and consent form.
12 Is that your signature on the bottom?

13 MR. ACOSTA: Yes, Your Honor.

14 THE COURT: And did you review this form with your
15 counsel before you signed it?

16 MR. ACOSTA: Yes, Your Honor.

17 THE COURT: And is it your desire to proceed with
18 your plea of guilty before me, a United States magistrate judge
19 here today?

20 MR. ACOSTA: Yes, Your Honor.

21 THE COURT: All right, I find the waiver's been
22 knowingly and voluntarily given and we will proceed with your
23 plea of guilty today.

24 Have you had an opportunity to fully discuss your
25 case with your counsel?

1 MR. RIOS: Yes, Your Honor.

2 MR. ACOSTA: Yes, Your Honor.

3 THE COURT: And are you fully satisfied with the
4 representation and advice you've been given in your case?

5 MR. RIOS: Yes, Your Honor.

6 MR. ACOSTA: Yes, Your Honor.

7 THE COURT: All right, have you received a copy of
8 the indictment in this case?

9 MR. RIOS: Yes, Your Honor.

10 MR. ACOSTA: Yes, Your Honor.

11 THE COURT: Do you understand the nature of the
12 charges alleged against you?

13 MR. RIOS: Yes, Your Honor.

14 MR. ACOSTA: Yes, Your Honor.

15 THE COURT: All right, you have the right to have the
16 indictment read aloud in Court or you can waive that right.
17 What would you like to do?

18 MR. RIOS: Waive.

19 MR. ACOSTA: Waive.

20 THE COURT: All right, Mr. Gonzalez, would you please
21 read the essential elements of the offense?

22 MR. GONZALEZ: Yes, Your Honor. The essential
23 elements for the offense is as follows.

24 The -- that the Defendants and one or more persons in
25 some way or manner made an agreement to commit the crime

1 charged in the indictment, that is, to possess with the intent
2 to distribute 5 kilograms or more of a mixture or substance
3 containing a detectable amount of cocaine.

4 Secondly, that the Defendant knew the unlawful
5 purpose of the agreement and joined in it with the intent to
6 further it.

7 And lastly, that the Defendant knowingly and
8 voluntarily joined in the agreement, that is, with the intent
9 to further its unlawful purpose.

10 THE COURT: Do you understand each of the essential
11 elements just set forth?

12 MR. RIOS: Yes, Your Honor.

13 THE COURT: And do you admit -- sorry.

14 MR. ACOSTA: I'm sorry. Yes, Your Honor.

15 THE COURT: And do you admit that you committed each
16 one of those essential elements?

17 MR. RIOS: Yes, Your Honor.

18 MR. ACOSTA: Yes, Your Honor.

19 THE COURT: All right, I've received a plea agreement
20 in each one of your cases. If you can make sure you
21 have -- counsel, do you have those documents for your client to
22 follow along?

23 MR. KALISCH: Your Honor, I do not. I delivered the
24 original to opposing counsel, and unfortunately, I did not keep
25 a copy.

1 THE COURT: Okay, I'm going to -- copies to you, so
2 that your clients can follow along with me through these
3 documents.

4 MR. KALISCH: Thank you, Your Honor.

5 THE COURT: Okay, if you will look with me at your
6 plea agreement, on page 7, Mr. Acosta, can you please verify
7 your signature dated November 29th, 2016?

8 MR. ACOSTA: Yes, Your Honor.

9 THE COURT: And Mr. Rios, please verify your
10 signature on page 7, dated November 29th, 2016.

11 MR. RIOS: Yes, Your Honor.

12 THE COURT: Did you review this document with your
13 counsel before you signed it?

14 MR. RIOS: Yes, Your Honor.

15 MR. ACOSTA: Yes, Your Honor.

16 THE COURT: And are all of the terms of your
17 agreement with the Government set out in this plea agreement?

18 MR. RIOS: Yes, Your Honor.

19 MR. ACOSTA: Yes, Your Honor.

20 THE COURT: All right, I'm going to go -- I'm going
21 to review some of the paragraphs in the plea agreement with
22 you. If you'll please follow along with me.

23 Starting in paragraph 1, Rights of the Defendants,
24 paragraph lists some of your constitutional rights, which are
25 to plead not guilty, to have a trial by a jury, to have your

1 guilt proven beyond a reasonable doubt, to confront and
2 cross-examine witnesses, and to call witnesses in your defense,
3 and to not be compelled to testify against yourself.

4 Paragraph 2 states that if you plead guilty in this
5 case, you'll be waiving all of those constitutional rights. Do
6 you understand that?

7 MR. RIOS: Yes, Your Honor.

8 MR. ACOSTA: Yes, Your Honor.

9 THE COURT: All right on page 2, paragraph 3,
10 entitled "Sentence", the maximum penalties the Court can impose
11 in your case are as follows.

12 Not less than 10 years and not more than life
13 imprisonment, a fine not to exceed \$4 million or both, and
14 Supervised Release of at least five years, a mandatory special
15 assessment of \$100, forfeiture of property involved or
16 traceable to the offense, restitution to victims or the
17 community, and cost of incarceration and supervision.

18 Do you understand those are the maximum penalties
19 that can be imposed in your case?

20 MR. RIOS: Yes, Your Honor.

21 MR. ACOSTA: Yes, Your Honor.

22 THE COURT: Paragraph 4 discusses the role of the
23 United States Sentencing Guidelines and the District Court. Do
24 you understand that the United States Sentencing Guidelines are
25 not binding on the Court?

1 MR. RIOS: Yes, Your Honor.

2 MR. ACOSTA: Yes, Your Honor.

3 THE COURT: Have you had an opportunity to discuss
4 the Guideline range in your case with your counsel?

5 MR. RIOS: Yes, Your Honor.

6 MR. ACOSTA: Yes, Your Honor.

7 THE COURT: All right. Going down to paragraph 5,
8 Guideline stipulations, you and the Government have agreed that
9 a number of Guideline provisions do or do not apply in your
10 case.

11 Do you understand that the Court is not bound by
12 these stipulations?

13 MR. RIOS: Yes, Your Honor.

14 MR. ACOSTA: Yes, Your Honor.

15 THE COURT: And so, even if the Court imposes a
16 different Guideline provision, which makes your sentence higher
17 than what you're expecting, you will still be bound by your
18 plea agreement?

19 MR. RIOS: Yes, Your Honor.

20 MR. ACOSTA: Yes, Your Honor.

21 THE COURT: All right, if you'll turn with me to
22 paragraph 10, the paragraph entitled "Voluntary Plea", this
23 paragraph states that your plea of guilty is freely and
24 voluntarily made and is not the result of force, threats, or
25 promises other than those set forth in this agreement.

1 Has anyone in any way tried to force you to plead
2 guilty in this case?

3 MR. RIOS: That's correct, Your Honor, no one has.

4 MR. ACOSTA: No, no one has forced me.

5 THE COURT: And other than a written plea agreement,
6 has -- have any promises or reassurances been made to you in
7 order to induce your plea of guilty?

8 MR. RIOS: No, Your Honor, not at all.

9 MR. ACOSTA: Not at all. No, Your Honor.

10 THE COURT: All right, going down to paragraph 11,
11 waiver of right to appeal or otherwise challenge sentence, this
12 paragraph states that you are giving up all your of rights to
13 appeal with the limited exception of two circumstances, that
14 being that the sentence imposed exceeds the statutory maximum
15 and your right to appeal or seek collateral review of an
16 ineffective assistance of counsel.

17 Are you voluntarily agreeing to give up your rights
18 to appeal in this case?

19 MR. RIOS: Yes, Your Honor.

20 MR. ACOSTA: Yes, Your Honor.

21 THE COURT: All right, finally, paragraph 13,
22 immigration status consequences. Do you understand that if you
23 are not a citizen of the United States, that a plea of guilty
24 in this case will likely result in deportation and affect your
25 ability to ever become a citizen of the United States?

1 MR. RIOS: Yes, I understand.

2 MR. ACOSTA: Yes, Your Honor.

3 THE COURT: All right, if you'll look with me at your
4 Plea Agreement Addendum. I just need you to confirm your
5 signature dated November 29th, 2016?

6 MR. RIOS: Yes, Your Honor.

7 MR. KALISCH: One moment, Your Honor.

8 THE COURT: Uh-huh.

9 MR. ACOSTA: Yes, Your Honor.

10 THE COURT: All right, before I can recommend that
11 the district judge accepts your plea of guilty, I must find
12 there's a Factual Basis to support your plea of guilty.

13 If you'll look with me at the Factual Basis filed in
14 your case, please confirm your signature dated November 29th,
15 2016?

16 MR. RIOS: Yes, Your Honor.

17 MR. ACOSTA: Yes, Your Honor.

18 THE COURT: And did you review this document with
19 your counsel before you signed it?

20 MR. RIOS: Yes, Your Honor.

21 MR. ACOSTA: Yes, Your Honor.

22 THE COURT: All right, Mr. Gonzalez, would you please
23 summarize the Factual Basis for both Mr. Acosta and Mr. Rios?

24 MR. GONZALEZ: Your Honor, the Factual Basis for both
25 are identical. It's the same Factual Basis for both.

1 The Factual Basis is as follows, that the Defendant
2 hereby stipulates and agrees that at all times relevant to the
3 indictment herein, the following facts were true.

4 That the Defendant, who is changing his plea to
5 guilty, is the same person charged in the indictment; two, that
6 the events described in the indictment occurred in the Eastern
7 District of Texas; that the Defendant and one or more persons
8 in some way or manner made an agreement to commit the crime
9 charged in the indictment to knowingly and intentionally
10 possess with the intent to distribute and dispense 450
11 kilograms or more of a mixture or substance containing a
12 detectable amount of cocaine; that the Defendant knew the
13 unlawful purpose of the agreement and joined in it with the
14 intent to further it; that the Defendant knew the amount
15 involved during the term of the conspiracy involved 450
16 kilograms or more of a mixture or substance containing a
17 detectable of cocaine.

18 This amount was involved in the conspiracy after the
19 Defendant entered the conspiracy, and was reasonably
20 foreseeable to the Defendant, and was part of jointly taken
21 activity.

22 And lastly, that the Defendant's role in the
23 conspiracy was to supply co-conspirators with kilogram
24 quantities of cocaine from various sources, which would then be
25 distributed to other co-conspirators and co-defendants during

1 the term of the conspiracy in the Eastern and Northern
2 Districts of Texas.

3 THE COURT: Thank you, is everything in the Factual
4 Basis true and correct?

5 MR. RIOS: Yes, Your Honor.

6 MR. ACOSTA: Yes, Your Honor.

7 THE COURT: Are there any changes you would offer at
8 this time?

9 MR. RIOS: No, Your Honor.

10 MR. ACOSTA: No, Your Honor.

11 THE COURT: All right, please state in your own words
12 the criminal conduct to which you're pleading guilty?

13 MR. RIOS: I participated in a conspiracy to bring
14 drugs to the United States.

15 THE COURT: Thank you.

16 MR. ACOSTA: I participated in a conspiracy to bring
17 drugs to the United States.

18 THE COURT: Okay, are both Defense counsel and the
19 Government satisfied there's a Factual Basis for the plea?

20 MR. GONZALEZ: Yes, Your Honor.

21 MR. KALISCH: Yes, Your Honor.

22 THE COURT: All right, and counsel have you discussed
23 the facts of the case with your clients and joined in their
24 decision to plead guilty here today?

25 MR. KALISCH: I do, Your Honor.

1 THE COURT: All right, Mr. Rios, with respect to
2 Count 1 of the indictment, how do you now plead, guilty or not
3 guilty?

4 MR. RIOS: Guilty.

5 THE COURT: Mr. Acosta, with respect to Count 1 of
6 the indictment, how do you now plead, guilty or not guilty?

7 MR. ACOSTA: Guilty.

8 THE COURT: Being satisfied with the responses given
9 during this hearing, I make the following findings on the
10 record.

11 In the case of United States of America v. Gustavo
12 Angarita Rios and Jose Home Acosta, the Court finds that the
13 Defendants are competent to plead at this time, have had
14 assistance of counsel, understands their trial rights,
15 understands the nature of the charges against them, understands
16 the maximum penalties that can be given under a sentence in
17 connection with the indictment, understands the District Court
18 will refer to the Sentencing Guidelines to set any sentence,
19 which such Guidelines are merely discretionary, that the plea
20 is knowing and voluntary, and that there is a Factual Basis for
21 the plea.

22 The Court further finds that the ends of justice will
23 be served by the acceptance of Mr. Acosta and Mr. Rios' plea of
24 guilty and will sign a recommendation that the district judge
25 accept your plea of guilty. And you'll have 14 days to make

1 any objections to that recommendation.

2 At this time, sirs, you'll be remanded to the custody
3 of the United States Marshal pending your sentencing hearing.
4 You will meet with probation in the interim.

5 You'll have a pre-sentence interview. A Pre-sentence
6 Report will be prepared by the probation officer. You'll be
7 given an opportunity to review that report with your counsel
8 and make any objections you see fit to it.

9 The district judge will utilize that report and your
10 objections in determining your sentence.

11 MR. RIOS: Yes, Your Honor.

12 MR. ACOSTA: Yes, Your Honor.

13 THE COURT: All right, anything further from the
14 Government?

15 MR. GONZALEZ: No, Your Honor, thank you.

16 THE COURT: Anything further from Defense?

17 MR. KALISCH: No, Your Honor.

18 THE COURT: All right, we'll stand adjourned in this
19 matter.

20 MR. ACOSTA: Thank you.

21 (Proceedings concluded at 11:23 a.m.)

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4 **CERTIFICATE**

5 I, Chris Hwang, court approved transcriber, certify
6 that the foregoing is a correct transcript from the official
7 electronic sound recording of the proceedings in the above-
8 entitled matter.
9
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12
13 _____ August 14, 2020

14 Chris Hwang

Date

15 Transcriber
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